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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/001,730	11/02/2001	Kevin A. Seiling	01-180	2670

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EXAMINER

KUHNS, ALLAN R

ART UNIT PAPER NUMBER

1732

DATE MAILED: 02/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/001,730

Applicant(s)

SEILING ET AL.

Examiner

Allan Kuhns

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 5-28 is/are pending in the application.
- 4a) Of the above claim(s) 6-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5 and 18-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>111504</u> . | 6) <input type="checkbox"/> Other: _____ |

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1.The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2.Claims 1-3, 5 and 18-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO00/03859 (Nomura et al.) in view of Crabtree et al. (6,062,624). Nomura et al. teach at column 16, line 9 (of the English version) that their foams are useful in car parts such as in panel cores. Nomura et al. teach making such products having an open cellular structure at column 8, lines 65-67 (of the English version), but Crabtree et al., also describing the formation of a foam to act as a filler for a cavity in a vehicle, disclose at column 3, lines 52-54 that such foams may be either open or closed cell. Thus, it would have been obvious to one of ordinary skill in the art to form the foams of Nomura et al. in either closed or open cellular form since Crabtree et al. teach that either form is effective. Crabtree et al. also teach the forming of foams from polyvinyl chloride at column 3, lines 58-59. The examiner's reliance on Crabtree et al. was prompted by applicant's objection to the use of Official Notice in the previous Office action.

3.Applicant's arguments filed November 15, 2004 have been fully considered but they are not persuasive. First of all, applicant presents arguments concerning how the claimed product (composition) is made (i.e. extrusion versus injection molding, blow molding or cavity expansion). These arguments are not persuasive because product-by

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—process claims are evaluated by their structure rather than the manner in which the structure is produced.

Applicant also appears to argue that the Nomura reference does not teach or suggest the use of a fiber length in the range of 50 to 900 microns. But the reference does teach the use of a fiber length within this range, for example at column 4, lines 4-7 of the English version, as noted by the examiner in the previous Office action.

Applicant's argument that the Nomura reference does not teach a polymer material with internal closed cells is considered to be moot by the examiner in view of the teachings of Crabtree et al.

Applicant argues that Nomura says nothing about an extruded polymer having closed cells as required by claims 1-3, 5 and 18-28. But Crabtree et al. teaches that foams prepared for similar applications as those disclosed by Nomura et al. may be either open or closed cell, and applicant's argument about the use of extrusion has been previously addressed by the examiner.

In objecting to the use of Official Notice by the examiner, applicant states that nothing in the record suggests that it is known in the art to extrude a polymer material having closed cells with glass fibers having a length in the range of 50 to 900 microns imbedded therein. It is noted by the examiner that the Official Notice taken in the previous Office action was related only to knowledge existing in the art concerning foams having closed cells.

4. Applicant's objection to the examiner's use of Official Notice in the previous Office action necessitated the new ground(s) of rejection presented in this Office action.

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Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Allan Kuhns whose telephone number is (571) 272-1202. The examiner can normally be reached on Monday to Thursday from 7:00 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Colaianni, can be reached on (571) 272-1196. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Allan R. Kuhns

ALLAN R. KUHNS
PRIMARY EXAMINER AU 1732

2-7-05